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Research Report

Competition, cultural autonomy and global governance: The audio-visual sector in Germany

HWWA-Report, No. 232

Provided in Cooperation with:

Hamburgisches Welt-Wirtschafts-Archiv (HWWA)

Suggested Citation: Perino, Grischa; Schulze, Günther G. (2003) : Competition, cultural autonomy and global governance: The audio-visual sector in Germany, HWWA-Report, No. 232, Hamburg Institute of International Economics (HWWA), Hamburg

This Version is available at:

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REPORT

Competition, Cultural Autonomy and Global Governance: The Audio-Visual Sector in Germany

Grischa Perino

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Hamburgisches Welt-Wirtschafts-Archiv (HWWA)
Hamburg Institute of International Economics
2003

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Competition, Cultural Autonomy and Global Governance: The Audio-Visual Sector in Germany

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This paper has been prepared within the Research Programme „Trade and Development“ of HWWA. It is a contribution to the Research Project „Competition, Cultural Variety and Global Governance: The Case of the Global Audio-Visual System.“ The Project is jointly conducted by HWWA and the Institute of International Affairs (IAI), Rome, and it is sponsored by Volkswagen Foundation.

An earlier version of the paper was presented at the International Conference „Competition, Cultural Variety and Global Governance: The Case of the Global Audio-Visual System“ organized by HWWA and IAI in Hamburg, October 31 and November 1, 2002.

HWWA REPORT

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1. Introduction

The conflict between cultural autonomy and free trade in goods and factors has been long-lasting and continues to be; it has given rise to intensive discussion both in political arenas like the EU and the WTO, and among scholars. On the one hand it is a long held tenet of the theory of international trade that – at least as a rule of thumb – free trade and unrestricted foreign investment increases the welfare of nations and thus deviations from it are politically motivated and should be abolished (cf. Rodrik 1995, Schulze 2000). Trade in cultural goods should go unrestricted like any other trade should; likewise foreigners should be allowed to freely invest in the domestic economy, including the cultural sector. On the other hand it has been argued that cultural goods exhibit characteristics very different from other goods: they produce important external effects, in particular non-use values such as the creation of a national identity and a cultural heritage. They therefore exhibit public goods characteristics which are argued to justify state interventions in the market for cultural goods.¹ Subsidization of domestic art and restrictions on international trade and factor flows in the cultural industries are important examples. In addition, the audiovisual sector serves a very important function in providing information to the public and thereby in the formation of public opinion. To ensure plurality of broadcasted opinion as a key ingredient for the political process of Western democracies, states have imposed additional restrictions on market structure which may interfere with the free trade in audio-visual cultural goods or FDI in this sector.

The conflict between cultural autonomy and free trade has been solved differently for the different markets for cultural goods. For example, for works in art each EU member state is free to impose whatever trade restriction it deems appropriate; this constitutes one of the very few exemptions from the single European market (Schulze 2003). The purpose of this paper is to assess how this conflict between cultural autonomy and the free trade postulate has been solved for the audio-visual sector in Germany. We seek to evaluate to what extent market entry in the TV market and the cinema market has been restricted and to what extent trade flows have been distorted due to politically or privately imposed restrictions.

In principle there are three avenues of approach for such an endeavor: (1) Restrictions can be classified according to the nature and the coverage of government regulations using an index that reflects its severity. Such an approach involves necessarily a substantial degree of arbitrariness and it typically reflects the stipulated rules but not its effect on market outcome; i.e. it disregards various degrees of enforcement or ways to circumvent regulations. (2) The price effects of regulations can be investigated. This is not a promising approach in the TV market, because one important output price cannot respond to regulations as TV fees are administered and very little is known about the most important input prices, i.e. the prices for

film rights. (3) Lastly one can look at market outcomes in terms of quantities produced and their structures and in terms of the resulting market structure, including the volume and structure of foreign trade in the relevant products. This is the approach we follow in this paper.

The paper is in two parts: Part I looks at the TV market, Part II analyzes the cinema market.² Chapter 2 describes the German TV market and its regulatory framework. After an overview of the TV market, we analyze the dichotomous market structure of public and private broadcasting corporations including the different relevant restrictions and the different incentive structures that result (Sect. 2.2), and assess the allocation of scarce transmission capacities regarding their restrictiveness for new entrants and how this scarcity will change due to digitalization (Sect. 2.3). Subsequently we investigate the different program portfolio of private and public stations (Sect. 2.4) and regulations on program content regarding production form and country of origin (Sect. 2.5) as well as the special competition law for the broadcasting sector (Sect.2.6). Chapter 3 deals with private barriers to entry through strategic behavior of incumbent firms. Chapter 4 is devoted to the cinema market and gives an account of direct and indirect government support for this sector (Sect. 4.1) before it looks at market outcomes (Sect. 4.2). Section 5 summarizes and concludes.

Part I The TV Sector

2. The Regulatory Framework

2.1 Overview and Rationale

The television sector is one of the most regulated industries in Germany. TV stations are regulated with respect to the content and to the source of the programs shown; they are subject to ceilings on the market share beyond which special competition provisions apply, and frequencies are licensed by state authorities. Private TV stations are regulated by almost 20 regulatory bodies.³ Moreover, public TV stations play a dominant role: they are funded by compulsory fees that have to be paid by all people owning a TV set and they enjoy a market share (in terms of viewers) of more than 40 percent (cf. Fig. 2).

¹ For a discussion see for example O'Hagan (1998).

² Although important, we do not look at radio stations. One reason is that radio stations are much more localized.

³ Among those are 15 state regulatory authorities, the so called 'Landesmedienanstalten', the working committee of the aforementioned regulatory bodies ('Arbeitsgemeinschaft der Landesmedienanstalten') with various subcommittees, the commission for the assessment of the concentration in the media ('Kommission zur Ermittlung der Konzentration im Medienbereich', KEK), the conference of the directors of the state regulatory bodies ('Konferenz der Direktoren der Landesmedienanstalten') and the Commission for protection of children and young people in the media ('Kommission für Jugendmedienschutz').

The reason for this heavy government intervention is the important role that mass media and television in particular play in the process of opinion formation and thus for the political process. The *freedom of the press* and the *freedom of reporting by broadcasting and film* is guaranteed by the German constitution (Art. 5 Grundgesetz). The constitution also prohibits censorship by the state. These fundamental provisions have been specified in the broadcasting treaty of the German states (Rundfunkstaatsvertrag, RStV), state broadcasting laws, and four interstate treaties which found joint public TV stations (NDR, MDR, RBB, SWF) as well as various rulings on broadcasting, in particular ten by the federal constitutional court.⁴ In order to ensure plurality of published opinion, freedom from dominant market power has been a particular concern of the legislature which has led to a special competition law for the broadcasting sector and a special commission that watches the concentration in the media sector (KEK, cf. fn 3).⁵ TV stations are obliged to inform freely, comprehensively, and truthfully.⁶

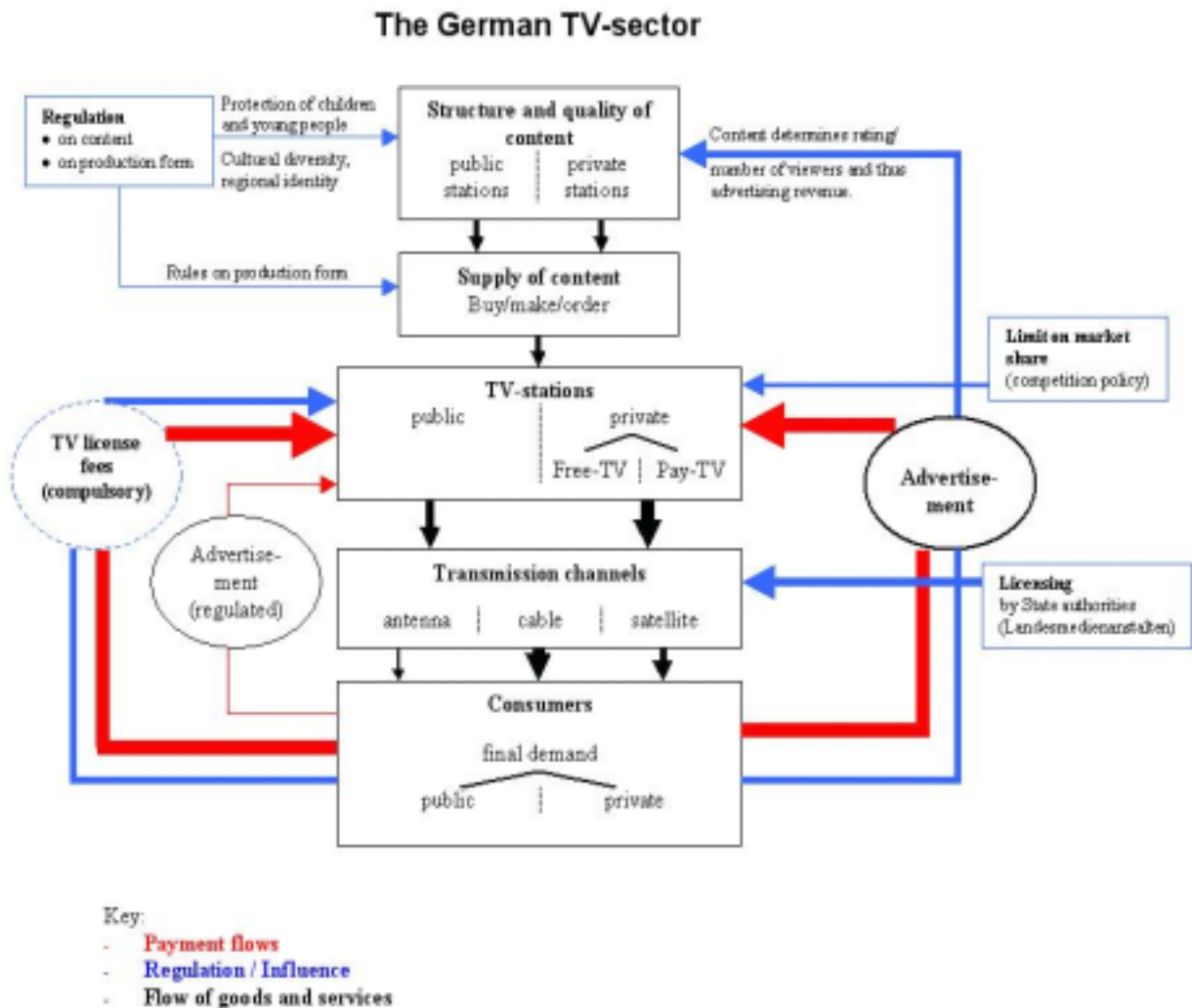
A basic motivation for regulation of the TV sector is thus to ensure the existence of a broadcasting system that is largely free from government intervention and that mirrors the pluralistic German society and its diversity of opinions. This motivation recognizes the role of the broadcasting system for open societies and reflects the horrible experiences of the nazism regime when broadcasting was monopolized and abused by the government for propaganda. As such this motivation does not intend to discriminate against foreign participation, but it could have restrictive side-effects. Another motivation for government regulation is concerned with the preservation of cultural identity and thus is intended to limit foreign (non-European) influence.

We will look at the major regulations in the TV sector to determine the extent to which they are discriminatory against foreign trade and investment. In order to identify and locate the relevant regulations we sketch the production chain in the TV market and show where and how government regulations interfere with private decision making. This is depicted in Figure 1. The TV market consists of three layers: (1) the production and supply of content, (2) the aggregation of various productions into a program by the TV stations, and (3) the distribution of the program to the consumers. Consumers in turn pay compulsory TV license fees and provide attention to the programs which is why the business sector uses the TV as advertising vehicle for which it pays. Activities on each of the three layers as well as advertisement and fees are regulated.

⁴ In its first ruling on broadcasting in 1961 the German constitutional court confirmed the necessity to regulate the broadcasting sector to ensure freedom of broadcasting and diversity of opinion and assigned the regulatory and law-making competence to the German states ('Länder'); Erstes Rundfunkurteil 1961, BVerfGE 12, 205. For a historical account and legal aspects see Karstens and Schütte (1999), for the rationale for public broadcasting in Europe see O'Hagan and Jennings (2003).

⁵ Heinrich (1999, ch. 7), Kübler (1999).

Figure 1:



Before starting to operate private broadcasting corporations need a license which is issued by the state regulatory authorities ('Landesmedienanstalten'). The public broadcasting system is given a special status as they have a different task in providing information and cultural programs, they are financed through fees and are self-organized, all of which is regulated in the state broadcasting laws and treaties (see below). TV content (films, shows, news etc.) can be produced by the TV stations themselves, they can be bought from outside sources as a finished product (as is the case for many movies) or they can be made to order by external production firms according to specific requirements of the stations. The TV stations then assemble the content into a program and distribute it either via antenna, cable, or satellite to the final consumer. There are regulations on the content structure of the program, on its geographic origin (EU versus non-EU), and also on the production form. Moreover the entire market is regulated through a special competition provision that sets in operation special requirements on plurality ensuring measures and prohibits the acquisition

⁶ Eighth broadcasting ruling of the Federal constitutional court, BVerfGE 90, 60

of new stations if the viewers share of a private broadcasting corporation (that may consist of more than one TV station) exceeds 30 percent.

While public TV stations are circumscribed in their possibility to raise revenue through advertising, advertising is the dominant source of income for private TV stations. Quality and structure of the program determine viewers' attention and thus the stations' income. Obviously this link is much more important for private stations than for public stations, which makes the program of the former strongly demand-determined. The program of the latter is subject to regulations that exceed general content regulations which aim mainly at protection of children and young people.⁷ These additional regulations are geared towards ensuring cultural diversity and other political goals.⁸ Lastly, frequencies for terrestrial and satellite broadcasting and channels for the cable network are allocated by state regulatory bodies ('Landesmedienanstalten') which reserve a certain share to public stations.

Regulations can thus be grouped as follows:

1. Regulations on the dichotomous market structure (public and private sector). This includes regulations on the organization of public broadcasting corporations and on sources of revenue (fees versus advertisement revenues)
2. Licensing of private TV stations and allocation of transmission capacities (frequencies and channels for terrestrial, satellite and cable transmissions).
3. Regulations on production form and geographical origin of production
4. Special competition law for the broadcasting sector, notably regulations on program content and new acquisitions beyond a certain market share.

We will go through each of the market layers and the regulations at that layer in turn, starting with the dichotomy of public and private stations (Sect. 2.2), then turning to the allocation of transmission capacity (Sect. 2.3). Sect. 2.4 shows the different program portfolios for private and public stations, Sect. 2.5 analyzes the restrictions on production of TV program content, Sect. 2.6 looks at special competition regulations for private broadcasting corporations.

⁷ Cf. §3 RStV (treaty between the German states on broadcasting) and founding laws for the state-wide TV stations, e.g. §9 NDR-StV, §11 MDR-StV, §6 WDR-Gesetz, §7 SWR-StV.

⁸ See §§ 2a, 25, 41 RStV on cultural diversity. The German states prescribe further principles for their state-wide public TV stations such as appropriate consideration of state and local concerns (§5 I NDR-StV, §6 I MDR-StV, §5 III WDR-Gesetz, §3 V SWR-StV), equal opportunities for both sexes (§8 II MDR-StV, §5 III WDR-Gesetz, §7 II NDR-StV, §6 II SWR-StV), environmental protection (§7 II NDR-StV), social justice (§7 II NDR-StV, §5 III WDR-Gesetz) etc.

2.2 The Dichotomous Broadcasting System

2.2.1 Overview

Since 1984 private and public TV stations have coexisted in the German TV market⁹. Having been limited to the reach of cable pilot projects in the early to mid eighties the subsequent allocation of terrestrial frequencies to the private broadcasters and the expansion of the cable network has led to a continuing increase in market share and thus importance. Currently private broadcasting corporations have a market share of almost 60 percent.¹⁰ The distribution of market shares is shown in Fig. 2 which takes into account all transmission channels.

This figure highlights not only the division between public and private broadcasting companies, but also the structure within the two market segments. Public broadcasting corporations consist of the ARD, the ZDF, and the so called 'third programs', and some smaller stations.¹¹ Since regulatory authority for broadcasting rests with the German states ('Länder') they have created public broadcasting corporations ('Landesrundfunkanstalten') for their state or in cooperation with neighboring states which provide TV programs intended for the population of their states but now typically have nation-wide coverage ('Dritte', 'third programs', cf. ALM 2001). These broadcasting companies institutionalized a close cooperation, the ARD, which forms a nation wide station ('the first program'). The ZDF ('the second program') provides the second nation wide public program and is organized at the federal level rather than as a cooperation of state broadcasting corporations (cf. Sect. 2.2.2). Together with the other public stations they account for 43.2 percent.

The private segment is dominated by only two groups: The 'Kirch group' formerly belonging to Leo Kirch and the RTL group both with a market share of slightly below a quarter. The remaining stations combined account for a market share of around seven percent and are all special interest stations either for news (CNN), sports (Eurosport), or music (MTV, VIVA, VIVA II).¹²

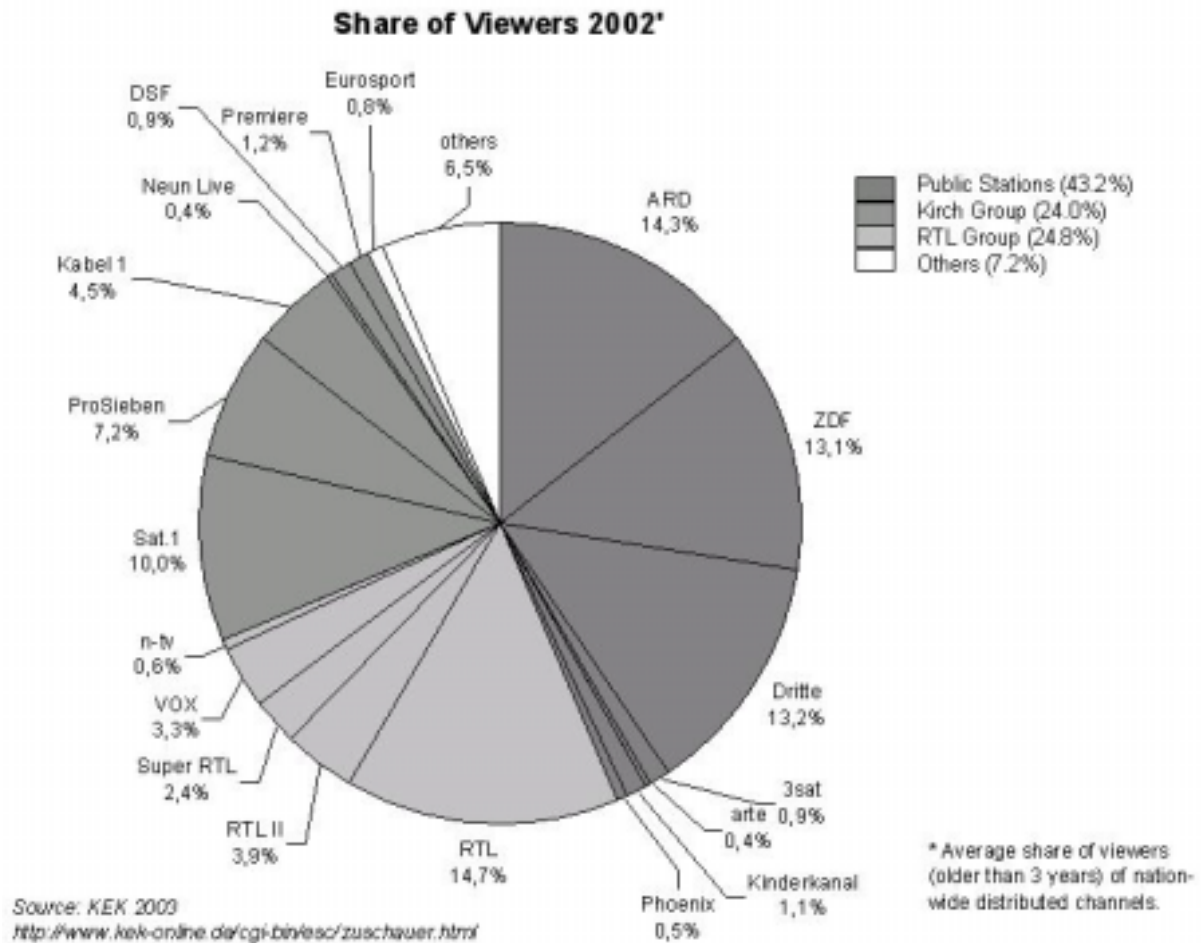
⁹ Instrumental for the introduction of private broadcasting corporations were the 1961 and 1981 rulings of the German constitutional court (BVerfGE 12, 205 und BVerfGE 57, 295), that supported private broadcasting. The technical prerequisite was fulfilled by the creation of four cable pilot projects decided upon in 1978 by the prime ministers of the German states, cf. Karstens/Schütte (1999), S. 25f.

¹⁰ If not indicated otherwise market share will henceforth refer to share of viewers.

¹¹ ARD (Arbeitsgemeinschaft öffentlich-rechtlicher Rundfunkanstalten der Bundesrepublik Deutschland, Working Committee of broadcasting corporations under public law of the Federal Republic of Germany), ZDF (Zweites Deutsches Fernsehen, second German TV station). For details on the structure of the public market segment see Sect. 2.2.2.

¹² There are circa another 60 local or regional stations with negligible market shares (Bernstein 2000). The ownership structure of all nation wide programs are published by the commission for the assessment of the concentration in the media (KEK) on a regular basis (<http://www.kek-online.de/cgi-bin/esc/beteiligung.html>).

Figure 2: Market share of public and private TV stations



At the time of writing the Kirch group undergoes major changes following a severe crisis. The core firms of the conglomerate filed for insolvency.¹³ This was followed by intensive bargaining with potential investors: Rupert Murdoch and Silvio Berlusconi showed interest, much to the dismay of all political parties and the general public who feared for the quality of the German TV landscape (cf. Mävers 2002, Hornig et al. 2002, Hammerstein et al. 2002, Zöttl 2002.) Then a German consortium led by the publishing house Bauer Verlag and the Hypovereinsbank engaged in serious negotiations that failed partly because Bauer holds already minority stakes in the RTL group which would have yielded in serious objections from the commission for the assessment of the concentration in the media (KEK) and of the German Federal Cartel Office (Bundeskartellamt).

In March 2003, the US billionaire Haim Saban has signed a contract to acquire the TV station group ProSiebenSat1 – including the TV stations ProSieben, Sat.1, Kabel 1 and N24 (100%)

¹³ The parent companies of the TV stations in the free TV, Kirch Media GmbH & Co. KGaA and Kirch Beteiligung GmbH & Co. KG, filed for insolvency on 08.04. and 12.06.2002 respectively. Kirch Pay TV GmbH & Co. KGaA, which owns Germany's only pay-TV station, premiere, filed for insolvency also on 08.04.2002. For details on the reasons see Ewing and Fairlamb (2002) und *Economist* (2002).

and the Kirch share of NeunLive (48,4%) – together with the film library estimated to contain 18 thousand movies and films. The package deal is estimated to amount to 2 billion Euros.¹⁴ The deal was approved by the regulatory bodies (the federal cartel office in particular) but Saban failed to raise the necessary funds in time (Rosenbach/Schulz 2003). The two parties agreed to nullify the take-over deal. It is expected that the attempts to sell the TV-stations will not continue for the time being. The broadcasting corporation Pro Sieben Sat1 will remain in the hands of its previous owners, notably the the insolvent KirchMedia AG for some time, but it is planned to increase the capital stock by issuing new shares.¹⁵

The rights for sport events have been sold independently¹⁶ as have been Kirch's substantial holdings of stocks of Springer publishing house, one of the leading German publishing house (Spiegel online 2002). The sports station DSF has been purchased by a consortium of EM.TV (broadcasting corporation), Karstadt-Quelle (a department store chain), and a Swiss businessman (Handelsblatt Nr. 092 of 14.05.2003, p. 18). Even though the insolvency proceedings have not be concluded yet it is clear that the duopoly on the private station segment will persist, although with slightly different relative weights.

2.2.2 Public broadcasting corporations

*History and structure:*¹⁷ Public broadcasting corporations have been licensed after WWII by the allied powers in their zone of occupation and have evolved to the 'Landesrundfunkanstalten' as we know them (Schreier 2001). They produce the so-called 'third programs' (see above). In 1954 they founded the ARD (cf. fn 11), an institutionalized cooperation of the state broadcasting corporations that provides the so called 'first program', to which the state broadcasting corporations contribute. Table 1 lists the 'Landesrundfunkanstalten', the German Länder that have jurisdiction over the respective public broadcasting corporation, and the key according to which they contribute to the joint program of the ARD.

¹⁴ Cf., e.g., <http://www.manager-magazin.de/ebusiness/artikel/0,2828,242218,00.html> (accessed 12.4.03)

¹⁵ SPIEGEL 16.6. 2003

¹⁶ <http://www.kirchgruppe.de/neu/de/pub/qfinder.cfm?p=kirchmedia/newsservices/pressemitteilungen.cfm> (press release by KirchMedia, 31.10.2002). See also Ohler (2003).

¹⁷ For history, organization, financing etc. of the public stations see also the respective websites www.ard.de with links to all contributing Landesrundfunkanstalten and www.zdf.de.

**Table 1: Public broadcasting corporations of the German Länder
and their share in the ARD**

<i>Landesrundfunkanstalt</i>	<i>German Land</i>	<i>Share</i>
Bayerischer Rundfunk (BR)	Bavaria	14.70 %
Hessischer Rundfunk (HR)	Hesse	7.20 %
Mitteldeutscher Rundfunk (MDR)	Saxony, Saxony-Anhalt, Thuringia	11.45 %
Norddeutscher Rundfunk (NDR)	Hamburg, Lower Saxony, Mecklenburg-Western Pomerania, Schleswig-Holstein	16.45 %
Radio Berlin-Brandenburg (RBB) ¹⁸	Berlin, Brandenburg	7.00 %
Radio Bremen (RB)	Bremen	2.50 %
Saarländischer Rundfunk (SR)	Saarland	2.50 %
Südwestrundfunk (SWF)	Baden-Wuerttemberg, Rhineland-Palatinate	16.95 %
Westdeutscher Rundfunk (WDR)	North Rhine-Westphalia	21.25 %

Source: 5. ARD-Fernsehvertrag (http://db.ard.de/abc/CONTENT.ergebnis?p_id=328&p_typ=eg)

The share refers to the share that each Landesrundfunkanstalt is obliged to deliver for the joint program as agreed by the directors of the Landesrundfunkanstalten on 30.11.1998 and has been in force since 1.1.1999. It provides also an indication of the relative importance and financial capabilities of the respective broadcasting corporations.

On 1. April 1963 the second nation wide public broadcasting corporation, the ZDF ('Zweites Deutsches Fernsehen'), went into operation which is organized at the federal level. This had been preceded by a considerable dispute over the jurisdiction on broadcasting between the federal government and the Länder which had been settled only by a ruling of the constitutional court in 1961 (BVerfGE 12, 205 and Karstens and Schütte 1999). In addition there are special interest stations Phoenix for news and Ki.Ka for children programs jointly operated by ARD and ZDF, the European culture station arte and 3sat, a station jointly operated by ARD, ZDF, and ORF and SF DRS, the Austrian and the Swiss public broadcasting corporations, respectively.

Organization: The Landesrundfunkanstalten BR, HR, MDR, NDR, RB, RBB, SR, SWR and WDR as well as the ZDF are public utility institutions governed by public law.¹⁹ They are not

¹⁸ The public broadcasting corporation RBB has been created by the interstate treaty between the states Berlin and Brandenburg from 25. 6. 2002 as a merger of the former Sender Freies Berlin (SFB) and Ostdeutscher Rundfunk Brandenburg (ORB) which held shares of 4.25% and 2.75 %, respectively. It went into operation as recently as 1. May 2003. Cf http://www.orb.de/_fusion/pdf/rbb-staatsvertrag.pdf for the treaty and http://www.orb.de/_fusion/aktuell_jsp.html and www.rbb.de (28.4.2003).

¹⁹ Cf. E.g. §1 NDR-StV, §1 MDR-StV, §1 SWR-StV, §1 WDR-Gesetz und §1 I u. III ZDF-StV. Cf. Schreier (2001) for legal aspects of the autonomy of the Landesrundfunkanstalten.

under supervision of state or federal government but all self-governed in a similar fashion.²⁰ For each corporation there are three central institutions: The broadcasting commission ('Rundfunkrat', for the ZDF 'Fernsehrat'), the administrative council ('Verwaltungsrat') and the director ('Intendant'). The broadcasting commission is intended to be the representation of the general public. It elects the members of the administrative council and the director, decides about program principles, and monitors the operation of the broadcasting corporation to ensure that it is within the legal framework. It cannot control the program a priori, but it may discontinue certain program formats. The broadcasting commissions vary in size and in composition, they consist of 24 to 74 members which are partly elected by the state parliament or are delegated by the government (around a third of its members), the remaining members are delegated by churches, trade unions, employers' federations, and organizations of artists, expellees, universities, environmental organizations a.s.f. according to a key laid down in the respective state broadcasting law or interstate broadcasting treaties. The administrative council has typically seven or nine members who are mostly elected by the broadcasting commission and partly delegated by the states or who are member *ex officio*. The administrative council controls the budget and the annual accounts and supervises the management of the broadcasting corporation. Several broadcasting laws deny the administrative council the right to control the program. The director as the CEO manages the broadcasting corporation and acts as its legal representation.

Although governments and parliaments cannot interfere with operation of the public broadcasting corporations they exert political influence through the members of the organs they elect or delegate as well as through the members delegated by NGOs who are close to political parties.

Guarantee of existence: The existence and development of the public broadcasting system as such has been guaranteed by rulings of the federal constitutional court and has been incorporated in treaties on broadcasting. This implies the guarantee of sufficient financing of the public broadcasting system (§11 I RStV and §1 II ZDF-StV) with the consequence that the state has to cover deficits to prevent insolvency of public broadcasting corporations (BVerfGE 89, 144).²¹ It does not guarantee the existence of any specific Landesrundfunkanstalt, which lawmakers are free to dissolve, but the system of public broadcasting in essence. The guarantee of development of the public broadcasting system includes also a guaranteed participation in new technologies and transmission modes (§§19, 52a RStV, see

²⁰ Specific regulations are different for each of the ten Landesrundfunkanstalten, the ARD and the ZDF and are laid down in the broadcasting laws or – in case that more German states have jointly jurisdiction over their Landesrundfunkanstalt – in the broadcasting treaties between these states. We therefore sketch the 'typical' regulation, for details see the respective legal source e.g. NDR-StV, MDR-StV, 1 SWR-StV, WDR-Gesetz, ZDF-StV.

Sect. 2.3.3). These regulations show that public TV stations are operating under markedly different restrictions than their private counterparts. Public TV stations are granted the privilege of broadcasting fees, the amount of which is stipulated in the broadcasting treaty ('Rundfunkfinanzierungsstaatsvertrag', RFinStV) and is based upon the estimated financial "needs".²² Obviously it is difficult to assess such needs in practice, all the more so because according to the 5th broadcasting ruling of the constitutional court it must not be assessed whether the actual program exceeds 'a necessary primary provision' however that may be defined (BVerfGE 74, 297).

Financing: The main source of revenue is the compulsory broadcasting fee that basically everyone who owns a TV set has to pay.²³ Currently this flat fee amounts to 5.32 € per month as a basic fee including radio use and an additional 10.81 € per month for TV use. In 2001 35.5 million TV sets were registered which generated a revenue of 4.18 billion Euros from TV fees and 6.65 billion Euros for radio and TV combined. Two percent of the revenue from TV fees are allocated to the 'Landesmedienanstalten', the state regulatory bodies for the media. The remainder is shared by ARD and ZDF which receive respectively 62.2368 % and 37.7632% (§§9-16 RFinStV). The ARD allocates its share to the state broadcasting corporations according to a key laid down in §§12-16RFinStV. The smaller public stations Phoenix, arte, and KI.KA are financed by ARD and ZDF with equal shares.

ARD and ZDF (but not the other public programs) may generate additional revenues for instance through commercials. These other sources may however only complement fee-based revenues but not dominate them; public stations are much more restricted in the time they may allocate to commercials than private stations. Commercials are limited to 20 minutes per day and must not be shown after 8:00 pm and on Sundays and holidays whereas private TV stations can use up to 15% of their daily air time for commercials or 20 % including TV shopping (§§14,15,44,45,45a RStV). Pay TV is prohibited for public broadcasting corporations.²⁴ Advertisement revenue accounts thus only for a small portion of overall income: It is 7 percent for the ARD, of which 53 % are generated by radio commercials, and around 10 percent for the ZDF.²⁵

²¹ Cf. also interstate treaties and broadcasting laws, for instance §1 III NDR-StV, §1 III MDR-StV and §1 I WDR-Gesetz.

²² These financial needs are assessed by a special commission, 'Kommission zur Überprüfung und Ermittlung des Finanzbedarfs der Rundfunkanstalten' (KEF).

²³ Fees may be waived for welfare recipients and low income households which is currently 7.7% of all households with radio or TV sets (GEZ 2001). The fee is collected by a special agency GEZ (Gebühreneinzugszentrale); the legal basis for the broadcasting fees is a treaty between the German states: Rundfunkfinanzierungsstaatsvertrag (RFinStV).

²⁴ On other possible sources of revenue including advertisement see federal constitutional court ruling (BVerfGE 90, 60), guidelines are laid down in §§14-18 RStV, for the prohibition of Pay-TV cf. Beucher et al. (1999).

²⁵ Cf. ARD (2001: 361, 383) and <http://www.zdf.de/programm/zdf/grundlagen/34212/index.html> (accessed 02.05.2002).

2.2.3 Private broadcasting corporations

Licensing: Private broadcasting corporations are also subject to heavy regulation which differs between states. We report common features in the state regulations. Private broadcasting corporations need a license from the state regulatory body for the media, the Landesmedienanstalt, and are subject to supervision with respect to program and the influence they exert on public opinion.²⁶ These regulatory bodies are again public utility institutions governed by public law and are autonomous with institutional setups that resemble those of the Landesrundfunkanstalten, i.e. the public broadcasting corporations.²⁷ A central media council ('Medienrat', 'Rundfunkkommission' etc.) is the guardian of diversity of opinion and the protection of children and young people. It decides on the budget and on the licensing of new stations and it elects the director of the regulatory body.²⁸ It consists of 20 to 35 members, a third of whom are typically elected by the state parliaments. The remaining members are again delegated by churches, trade unions and industry associations, environmental and youth organizations, universities etc.²⁹ Licenses are tied to certain prerequisites which apply equally to incumbents and entrants. [That, of course is true for most of the other regulations, like those on advertisement.] Among these are safeguards for a regular and sound operation of the station, the prohibition for members of the parliaments, political parties, governments, public stations and their employees to own a non-negligible share of the station and the requirement that the broadcasting company or the owner must be a resident in Germany or in case of a European firm, must reside in the EU.³⁰

Financing: Private TV stations (except for the single Pay-TV station Premiere) generate revenue exclusively through selling air time for advertisement. As the value of air time depends on the number of viewers the stations have strong incentives to attract broad attention which in turn influences their program content (see Sect. 2.3). Viewers' attention is the product private TV stations sell. The distribution of market shares in the market for TV advertisement is shown in Fig. 3

²⁶ The license is limited to 5 to 10 years but may be renewed; for two states (North Rhine-Westphalia and Baden-Wuerttemberg) it is independent of the allocation of radio frequencies or channels for the cable network, for the rest it is linked to it (see Sect. 2.3). Regulations differ between states, cf. §§ 20 u. 21 RStV, § 12 LMedienG BW, § 6 LRG RP. If the ownership structure of a TV station changes significantly, its license needs to be reviewed and renewed (e.g., §12IV and V LMedienG BW).

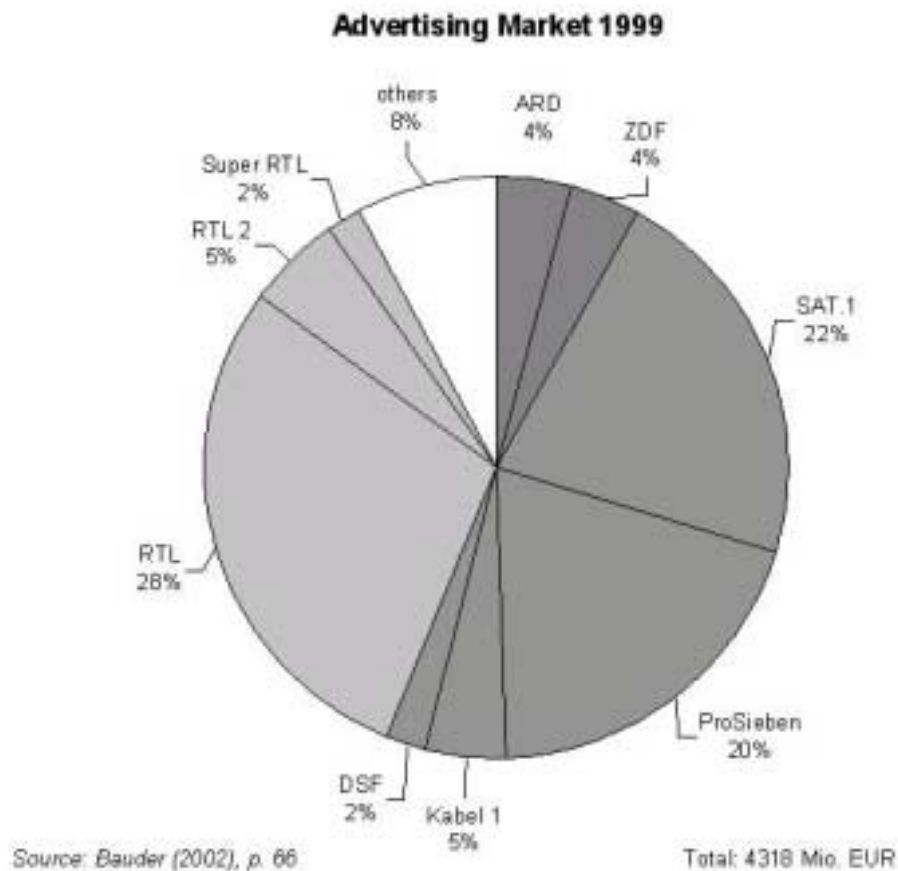
²⁷ Cf. §62 I LRG RP, §§ 87 and 90 LMG NRW, Art. 10 I BayMG, §29 I LMedienG BW.

²⁸ In Baden-Wuerttemberg the board of directors is elected by the parliament with a two thirds majority.

²⁹ The composition is prescribed in the state media laws, for example in §29 I LMedienG BW, Art. 13 I BayMG, §93 LMG NRW, §64 I LRG RP.

³⁰ Unlike in the US, however, the owner of the broadcasting corporation need neither be a German resident nor a German citizen.

Figure 3:



The two private groups have a dominant position with a total of 84 % of the market, public TV stations account for only 8 % of the market reflecting the stipulated ceilings on air time for advertisement.

Pay TV: The station Premiere is the only pay TV station in Germany and captures only 1.2 % of the market (i.e. 2.4 mn customers). On 8. May 2002 its parent company Kirch Pay TV GmbH & Co., which belonged to the Kirch group, filled for insolvency. The continued losses of the Pay TV has been said to have played an important role in the insolvency of the entire group as the group's core free TV stations were profitable.³¹

The reasons for lacking profitability are a strong competition from free TV³² on the one hand and strict regulation on pay TV on the other hand. "Events of substantial importance for the society" must not be restricted to the pay TV (§5a I (1) RStV) which includes many attractive sports events such as the Olympic games and important soccer matches. Moreover, hardcore adult films must not be shown even in encoded TV programs in Germany (Beucher

³¹ *Frankfurter Allgemeine Zeitung* (2002), Nr. 192, S. 13, *Wirtschaftswoche* (2002).

³² The number of nation wide programs in the free TV is very high in international comparison, cf. Bauder (2002)

et al. 1999). These two restrictions substantially reduce the willingness to subscribe to pay TV programs.³³

2.2.4 Assessment

The dichotomy of public and private broadcasting corporations in the German TV market as such does not discriminate against foreign investment, but it reduces the market share that is available to private broadcasting corporations, including potential foreign investors. The privilege of fee-based revenue coupled with differential restrictions on advertisement has led to a market share of public stations of around 40 percent. Yet, since public stations are heavily restricted in their possibilities to generate advertisement revenue and account only for 8 percent of the TV advertisement market they have a much smaller effect on the revenue share of private stations than their market share in terms of viewers would suggest.³⁴ Rather they affect revenues of private stations indirectly through reducing the viewer numbers available to private stations and thus the willingness of companies to pay for TV advertisement; likewise public stations are additional demanders for TV content and therefore increase the private stations' costs. In addition to a – rather indirect – deterring effect for market entry, the existence of public stations may also reduce the import of foreign films due to their different program structure (see below).

Regulations on pay-TV content (in particular regarding important sport events) and prohibition of pornography together with strong competition from free TV (both private and public) makes pay-TV a non-viable solution, but again this is not a discrimination against foreign firms but the result of ethical and general political considerations. The best piece of evidence that there are no legal barriers to entry in the German TV market is fact that the deal to sell the core of the Kirch conglomerate to Mr. Saban, an American citizen of Israeli descent, was approved by the regulatory bodies. The reasons of its failure were solely financial. About a quarter of the total German TV market had been about to change into foreign hands.

³³ An additional factor may be that air time for commercials is capped also in commercial TV stations which reduces the attractiveness of commercial-free pay-TV programs.

³⁴ Note that without public TV stations there would be more private TV stations as the total advertisement revenue would increase due to higher total viewer numbers for the private sector (and eight percent of the market would be available to private stations as well), but less TV stations in total as additional private TV stations would take a larger share of advertisement revenue than the public stations do.

2.3 Allocation of Transmission Channels

2.3.1 Transmission channels

TV programs can be transmitted terrestrially (via antennas), through a cable network, or via satellite. These transmission channels differ with respect to the costs for the consumers³⁵ and the number of programs transmitted, and thus their attractiveness to the consumers. Transmitted signals can be analog or digital. Currently about 90 percent of all households receive analog transmission. Table 2 gives the relative weights of the analog transmission channels. Terrestrial transmission has continuously lost in importance mainly due to the limited number of programs, but also due to decreasing per unit costs for cable and satellite transmission.

	<i>Terrestrial</i>	<i>Cable</i>	<i>Satellite</i>
Avg. number of channels transmitted to households	6 ^a	32 ^b	47 ^c
Number of households	1.9 mn	19.0 mn	11.7 mn
Change in 2001-2002	- 26%	+ 1.6%	+ 3.5%
Market share	5.8%	58.2%	35.8%

Sources:
^a <http://www.ueberall-tv.de> (17.04.2003)
^b Landesanstalt für Medien NRW, <http://www.lfm-nrw.de/lfr/faq/kabelbelegung> (17.04.2003)
^c transmitted by ASTRA satellites, which have a market share of 98%, <http://www.astra.lu/market/deutschland/download/Progr1.pdf> and <http://www.astra.lu/press-info/documentation/brochures/pdf/Penetration-Germany-0303.pdf> (17.04.2003)
all other data: ASTRA Marketing GmbH press release 07.03.2003, <http://www.ses-astra.com/press-info/news/press-releases/03/20030312.shtml> (19.04.2003)

While analog terrestrial transmission will continue to decline cable and satellite transmissions will grow in importance,³⁶ with digital transmission most likely experiencing the highest growth rates (see Sect. 2.3.3)

³⁵ Variable costs are zero for terrestrial and satellite analog transmission (except for the broadcasting fee) while access to cable involves another monthly fee. The upfront investment is relatively high for a satellite dish and also for cable access, which however is paid upfront by the provider.

³⁶ The European Commission seeks to increase competition between networks has strengthened the position of individuals who want to install a satellite dish (Mitteilung der Kommission über die Anwendung der allgemeinen Grundsätze des freien Waren- und Dienstleistungsverkehrs – Art. 28 und 49 EG – auf dem Gebiet der Nutzung

2.3.2 Allocation of Channels to TV stations

Typically, frequencies and channels for the three transmission channels – terrestrial, cable and satellite – are allocated by the Landesmedienanstalten (LMA) in a bargaining process between the LMAs and the local public broadcasting corporations for their territory.³⁷ (Satellite channels are first allocated to the German states and then from the states to the stations.)³⁸ Procedures differ by states and by transmission channels so that it is impossible to portray a general practice accurately. We describe common features for analog transmission and give two representative examples – Rhineland-Palatinate (RP) and North Rhine-Westphalia (NRW).³⁹

Terrestrial: The public stations ARD, ZDF, and the state public TV station are given one frequency each; the remaining capacity is allocated by the LMA (in cooperation with the local public TV station) to private stations according to their contribution to plurality in the case of North Rhine-Westphalia; for most other states the rules are very similar. Note that terrestrial and cable channels are not automatically state-wide, but often limited to smaller regions.⁴⁰ The declining importance of terrestrial transmission is demonstrated by RTL and Sat.1 abandoning their option to prolong their license for terrestrial frequencies in NRW. They are now being tendered.⁴¹

Cable: As a rule, public TV stations are guaranteed a certain amount of channels, which is limited by § 19 RStV. In all states channels are given to the nation-wide public stations ARD and ZDF and the local public TV station, i.e. the ‘relevant third program’ (WDR, BR, etc.). In addition ARD and ZDF are allowed to offer two special interest programs (Phoenix for news and Ki.KA for childrens programs) and one European culture program (arte). Moreover they may participate in international cooperative stations (3sat) for which capacity is set aside.

The remaining capacities are allocated to private stations and public stations (mainly ‘third programs’ from other states) to ensure maximum plurality according to the broadcasting law that stipulates to some allocation rule which typically allows the LMA some discretionary

von Parabolantennen). Hitherto, landlords and also local authorities could prohibit the installation of satellite dishes, but this legal practice is now likely to change (Bundeskartellamt 2002, Dörr and Zorn 2001).

³⁷ This is the respective German state (even if there is one public broadcasting corporation for more than one state), only Berlin and Brandenburg have one common Landesmedienanstalt.

³⁸ Satellite transmission is not limited to national boundaries and thus creates a problem with film rights which are typically defined for a specified period and area and are practically exclusive rights. Satellite transmission therefore can erode property rights to films with known consequences. This effect is limited by language barriers and through an agreement by member states of the European Council. In Germany it is implemented in §20 IV RStV, that allows a license to be denied or revoked which target their program predominantly to people in other countries.

³⁹ We are grateful to Barbara Beck-Grillmeier and Ingo Nave of the Landeszentrale für private Rundfunkveranstalter Rheinland-Pfalz and Jürgen Brautmeier of the Landesanstalt für Medien NRW (i.e. the respective LMAs) for providing information on the allocation procedures.

⁴⁰ For instance Rhineland-Palatinate has eleven transmission stations and gives frequencies to Sat.1 (for 10 stations), RTL (3), Pro7(6), VOX(1), N24(1), RNF(1); NRW gives terrestrial frequencies to ARD, ZDF, WDR and the private stations RTL, Sat1, VOX.

scope. In Baden-Wuerttemberg private TV stations that have high market shares nation-wide are given preference over smaller stations (§21 I LMedienG BW).

In Rhineland-Palatinate (RP) seven public stations ARD, ZDF, SWR (the state public station), KI.KA, phoenix, ARTE, 3sat are given channels as well as Sat.1 (as the only channel that received its satellite license in RP) and an open channel. Then one or two further channels are given to regional or local stations and programs from neighboring areas that transmit transborder receive additional channels for the areas in which they are received terrestrially. 15 channels are allocated by the cable network operator (not the LMA !) according to the following rule: 5 go to full-program private stations (such as Pro7, RTL, Kabel 1, VOX, RTL2). Other 'third programs' (WDR, NDR, MDR etc.), news or education stations (ntv, N24, CNN), and music stations receive two channels each. One channel each is given to a special entertainment station, an English language program, a French language program, and a sports station. The remaining channels can be allocated freely by the cable network provider who must charge a price stipulated by the telecommunication regulatory authority (Regulierungsbehörde für Telekommunikation und Post) and thus is prohibited to auction off channels.

North Rhine-Westphalia (NRW) has a very similar allocation mechanism: First the seven public stations receive a channel (ARD, ZDF, WDR, KI.KA, phoenix, ARTE, 3sat) and capacity is given to one university channel and one open channel. 17 additional channels are allocated by the LMA according to their importance in terms of viewer numbers and their contribution to the plurality of programs and diversity of suppliers. Those TV stations that are transmitted also terrestrial are given priority. The 17 channels may include one foreign station for bordering regions and foreign-language programs. The remaining 5 to 7 channels are allocated by the cable network operator.

Since NRW introduced a new broadcasting law in July 2002 the current allocation of channels⁴² reflects the old law according to which the channels were allocated by the LMA after the 7 public stations, one or two transborder channel in bordering regions and all other terrestrially transmitted stations had been served. TV stations were classified (news/ general-entertainment/ music/ sport/ local/ foreign language) and in each class ranked according to their importance and their contribution to program diversity. Then channels were allocated in subsequent rounds to all categories with the most important station of each category being given a channel in the first round, the second most important station in the next round a.s.f.

⁴¹ <http://www.lfm-nrw.de/recht/ausschreibungen/> (17.04.2003).

⁴² The current allocation of channels is listed in the appendix. The new allocation implementing the new broadcasting law will be made in summer 2003 (<http://www.lfm-nrw.de/recht/ausschreibungen/>).

Satellite: Allocation procedures follow those for terrestrial transmission. However, there has been no scarcity of frequencies for the last couple of years.⁴³ To get a license from a LMA it is sufficient to have a contract with a satellite broadcasting operator, provided the station satisfies the general licensing requirements. This applies for analog as well as for digital channels.⁴⁴ Recent market entries occurred in the satellite segment (e.g. sonnenklar.tv and Tele 5).⁴⁵

Assessment: Analog terrestrial and cable transmission capacities are scarce. The latter is the key to almost sixty percent of the German TV market and, in contrast to satellite transmission, allows for a step-by-step entry (with respect to reach and transmission charges). Since the allocation of cable channels is subject to discretionary decisions of the LMA (e.g. in NRW) or the cable network operator (RP) significant barriers to entry *may* exist for new, foreign or domestic broadcasting corporations. It is hard to assess how restrictive these barriers to market entry through regulations are, not only because decisions are politicized and not market based (i.e. via auctions like for the allocation of UTMS licenses) but also because procedures differ for all 15 regulatory bodies. To predict LMAs' behavior is especially difficult as its very heterogeneous composition makes decisions dependent on the particular case as coalitions are not so clear cut as in parliamentary or administrative decisions.

2.3.3 Digitalization

The most important technical development for the medium term is the digitalization of TV transmission which enhances capacity substantially. This is shown in Table 3 (see also Table 2)

Currently only ten percent of all households with TV receive digital transmission, but this share is expected to increase rapidly to almost 100 % at the end of the decade as this is a political goal of the current government. This implies that the current bottleneck of scarce transmission capacity will be widened very considerably and that there will be a huge potential for market entry by domestic and foreign TV stations. Currently there may be a scarcity of digital cable channels in some regions as transition from analog to digital transmission takes place and capacities are shared by analog and digital transmission, restricting the availability of frequencies for each mode.

⁴³ According to interviews with Ingo Nave of the LpR (cf. fn. 39) and Karl-Friedrich Reichardt of the ASTRA-Marketing GmbH.

⁴⁴ The allocation procedure follows § 51 III b RStV.

⁴⁵ See <http://www.ses-astra.com/press-info/news/press-releases/03/20030228.shtml> (ASTRA Press release 28.02.2003) and <http://www.kek-online.de/cgi-bin/resi/i-medien-fernseh-liste/.../kek/medien/beteiligung/103tmtv.pdf>

Table 3: Digital transmission channels 2002

	<i>Terrestrial</i>	<i>Cable</i>	<i>Satellite</i>
Avg. number of channels transmitted to households	24 ^a	> 100 ^b	146 ^c
Number of households	70.000 ^d	1.6mn	2.1mn
Increase 2001- 2002	100%	n.a.	51%
Market share	0.02%	43.2%	56.8%

Sources:

^a <http://www.ueberall-tv.de> (17.04.2003), after transition from analog to digital transmission has been completed

^b Landesanstalt für Kommunikation Baden-Württemberg, http://www.lfk.de/projekte/digitalerrundfunk/download/pos_kabel_I.pdf (17.04.2003), after transition from analog to digital transmission has been completed

^c Transmitted by ASTRA satellites at 19.2° East, which have a market share of 97% in Germany. In total more than 430 digital programs are transmitted by ASTRA satellites at this position but most foreign pay-TV programs are not accessible for German customers. <http://www.ses-astra.com/market/deutschland/download/Progr2.pdf> (17.04.2003)

^d started on 1.Nov. 2002 as a pilot project in Berlin. Medienanstalt Berlin Brandenburg press release 05.03.2003, <http://212.121.137.189/cgi-bin/pdf/pdf1.pl?file=http%3A/www.mabb.de/start.cfm%3Fcontent%3Daktuelles%26id%3D606> (19.04.2003)

all other data: ASTRA Marketing GmbH press release 07.03.2003, <http://www.ses-astra.com/press-info/news/press-releases/03/20030312.shtml> (19.04.2003)

In NRW only the digital services of ARD, ZDF, Premiere and some international stations are transmitted digitally at the time of writing.⁴⁶ Other stations will follow as transition proceeds. For satellite transmission the number of channels presented in table 3 gives the number of programs currently receivable in Germany. There is however still considerable free capacity so that this number is likely to increase. Therefore it is crucial how digital channels are allocated, mainly for cable and satellite as digital terrestrial transmission will be limited to large urban areas and has less channels than the analog cable or satellite transmissions.⁴⁷

Allocation of cable channels: As a rule, a maximum capacity of the equivalent to three analog channels is reserved for public stations (§19 III, IV RStV), which will amount to 12 to 24 digital channels depending on the transmission channel. In Rhineland-Palatinate a third of total cable capacity must be allocated by the cable network operator with the aim to ensure maximum plurality. The LMA controls the allocation of this third. The remaining capacity can be allocated freely by the cable network operator. This marks a major change towards a more deregulated approach (laid down in §52 RStV) compared to the administered allocation for analog channels.⁴⁸ The cable network operator has to charge administered prices as in

⁴⁶ http://www.ish.de/linebreak4/mod/netpdf/data/ISH_TV_DIGITALE_PROGRAMMBELEGUNG_010403_02.pdf

⁴⁷ Terrestrial transmission has been digitalized only since November 2002 and so far limited to Berlin.

⁴⁸ Of course regulations on protection of minors, against radicalism etc continue to apply.

the case of analog transmission (§59a LRG RP). The regulation for North Rhine-Westphalia is very similar, the only difference being that an additional capacity of the equivalent of one analog channel is given to local stations with 50 % thereof going to the WDR and capacity is given to university channels (§21 LMG NRW). It is thus very likely that foreign owned stations will receive substantial capacity, including Berlusconi and Murdoch owned conglomerates.

2.3.4 Technical Convergence

Technical convergence may also increase transmission capacity. Telecommunication networks are becoming more efficient and will have the capacity for real time transmission of motion pictures in sufficient scale and quality (Reimers 2002). A study done for the Federal Ministry of Economics and Labour in 2001 projects that at the end of the decade broadband internet services capable to transmit Internet TV have a reach similar as cable and satellite networks (Büllingen and Stamm 2001). At the same time cable networks and satellite transmission are being upgraded to allow internet use. This requires that consumers can use the channel to transmit information back to the provider; it also allows video-on-demand and other interactive features. Currently, this technique is being implemented in some regions, among them urban areas in North Rhine-Westphalia and Baden-Wuerttemberg and Berlin.⁴⁹ However, for most parts of Germany it is still uncertain if and when this upgrading will be realized. The satellite operator ASTRA has announced to offer an interactive TV service at the end of 2004.⁵⁰ Networks' economic characteristics and the content will tend to converge. Their substitutability will increase and so will competition: the classical bottleneck of limited network capacities will again be widened substantially.⁵¹

Technical convergence is beneficial as it allows for market entry of additional TV stations and thus enhances competition and the variety of programs (much the same way digitalization does). At the same time it may pose a severe challenge for the regulatory setting. TV stations which transmit terrestrially or through the cable network can be regulated by federal or state law makers. Satellite transmission has already transborder effects. If TV programs are transmitted via the internet from anywhere in the world any (national or even international) regulation will be much more difficult to enforce. That refers not only to the protection of young people which is a problem in the internet already but also to all other

⁴⁹ See websites of the respective cable network providers ish (NRW), Kabel BW (Baden-Württemberg) and Kabel Berlin/Brandenburg http://www.ish.de/website/templates/view_folder.php?folder_default_netfolderID=10048, <http://www.kabelbw.de/bandone1.html> and http://www.kabel-bb.de/extras/content/service/interactive/ausbaugebiet/ausbaugebiet_cont.html

⁵⁰ <http://www.astra.lu/products/services/products/itv/index.shtml> (19.04.2003)

⁵¹ See Woldt (2002), Sjurts (2000), Ferguson and Perse (2000), Merkt (1998 ch. 6). To increase competition between networks the EU commission has stipulated that companies which own telephone and cable networks need to separate the networks by creating independent units for each network (EU directive 1999/64/). At the

restrictions. In particular, a level playing field could be severely compromised if “internet broadcasters” did not honor property rights regulations. This is particularly important for film rights (for movies, sport events) that are defined for a time period and a geographical area and constitute a major cost factor and competition parameter (cf. Sect. 3). In this case national regulation will be ineffective.

While regulations of the allocation of transmission capacity may restrict or even prohibit the operation of a TV station directly, restriction on program content may make it more costly for foreign competitors to enter the market and thereby restrict market entry. Also, they may distort international trade in movies. This is what we will investigate next.

2.4 Program Portfolio

Viewers’ attention is the product that TV stations sell to the business sector that wants to place its advertisement most effectively. Thus, the program portfolio for the private stations is chosen to maximize the number of viewers at any given time, as individuals may easily zap through the programs. In particular, it is important that the station is in the “relevant set” i.e. the first nine keys of the remote control.⁵² Because TV programs are experience goods, reputation plays an important role. *Private* TV stations, depending heavily on advertisement revenue, design their program to best meet viewers’ demand given the program structure of public TV stations. *Public* TV stations less dependent on advertisement revenue and therefore on high viewer numbers may broadcast more “minority programs”. Besides, as public TV stations are designed to fulfill a special role in providing information on politics, society, and culture and as broadcasting commissions watch over their performance their portfolio is much more oriented towards information and cultural programs and much less to entertainment, fiction and advertisement. Table 4 provides an overview of the different portfolios and the stark differences between the major public and private stations. It reveals also a certain differentiation within the private sector – the two ‘flag ships’ of the respective groups (RTL and SAT1) have a program portfolio closer to the public stations while the remaining stations have a starkly different structure.

same time the EU commission Recent developments seem to indicate that this convergence will take not take place in the immediate future, but over the next few years (Riedel 2002a,b), Hamann (2002).

⁵² Karstens and Schütte (1999: 104ff) , Heinrich (1999), Schumann and Hess (2002).

This structure in itself does not indicate a restriction on imports of foreign films or of barriers to entry, but is the result of optimizing behavior on part of the private broadcasting corporations given the portfolio structure of the public TV stations. However, since private stations have a high share of fiction and entertainment, any restriction thereon in terms of geographical origin or production method will affect their behavior.

	public		private					
	ARD	ZDF	RTL	SAT.1	ProSieben	VOX	RTL II	Kabel 1
Information	49.5	53.9	31.9	31.9	24.9	17.7	5.8	7.4
news	13.3	13.9	4.3	5.1	1.2	2.0	0.9	1.1
magazines	19.2	19.7	14.7	10.6	14.0	4.6	2.6	2.9
other	17.0	20.3	12.9	16.2	9.7	11.1	2.3	3.4
Entertainment (non-fiction, game shows etc.)	7.0	4.1	11.3	10.4	7.9	7.8	16.2	6.0
Fiction	35.1	31.9	34.4	29.2	49.7	46.7	57.0	62.0
movies	11.9	6.8	1.8	2.2	17.3	17.6	15.9	18.0
TV films	8.2	9.2	1.9	2.7	3.6	4.2	2.6	5.3
series	12.1	13.4	26.2	21.0	22.5	24.9	23.5	38.7
other	2.9	2.5	4.5	3.3	6.3	0.0	15.0	0.0
Sports	0.6	1.5	0.0	2.5	0.0	0.0	0.0	0.0
Children's programs	8.4	6.6	5.5	3.4	5.5	0.0	15.7	0.0
Religious programs	0.0	0.6	0.0	0.1	0.0	0.0	0.0	0.0
Advertisements	1.4	1.6	17.4	20.5	12.6	19.8	15.8	19.8
Trailers etc.	3.4	3.5	4.7	5.3	4.9	8.0	4.5	4.8
Sum	105.4	103.7	105.2	103.3	105.5	100.0	115.0	100.0

Columns sum up to more than 100 percent due to overlapping definitions for fiction and children's' programs
Source: ALM, tab. 7/12/14
Based on a random sample of two weeks (2.-8. April 2001)

2.5 Production of Content

TV stations may produce the programs they broadcast themselves or in cooperation with others, they may order programs produced by independent companies according to their needs or they may purchase finished products (like movies, TV series).⁵³ If they decide to buy or to order they may do so domestically, from producers in EU member states or in the rest of the world. We identify three regulations that may potentially restrict entry in the German TV market or the import of foreign TV content.

First, according to §6 II RStV non-special interest TV stations *should* produce, co-produce or order a “substantial part” of their content, rather than buy it off the shelf. It is not clear what percentage constitutes a “substantial part”, opinions range from 10 to 33 percent (Beucher et al. 1999). Table 5 provides the current structure of production:

Table 5: Forms of Production 2001
(in percent)

	ARD	ZDF	RTL	SAT.1	ProSieben	VOX	RTL II	Kabel 1
Own and co-productions, commissioned production	78.4	79.3	57.9	57.5	34.4	23.5	21.6	11.5
Purchases	16.8	15.6	20.0	16.7	48.1	48.7	58.1	63.9
Trailers	3.4	3.5	4.7	5.3	4.9	8.0	4.5	4.8
Commercials	1.4	1.6	17.4	20.5	12.6	19.8	15.8	19.8
Total	100	100	100	100	100	100	100	100

Percentage is based on: 24h per day; sample: one week; all genres

Source: ALM (2001), p. 152

This requirement – if strictly enforced – could considerably increase the setup costs for a market entrant as it would have to produce a substantial part of its program before going into operation. Since the most likely entrant would be an existing – foreign – broadcasting corporation trying to enter the German market, it would probably already have some own productions so that the restriction may be less biting than it seems at first glance. However, this regulation is not enforced and there is no penalty if this regulation was violated. Moreover according to the prevailing interpretation of the law, stations need not fulfill the requirement if the additional cost jeopardized their operation (Beucher et al. 1999: 104). Thus, this regulation does not constitute a barrier to entry.

As a second potential restriction, the EU TV directive (89/552/EEC) stipulates that 10 percent of either air time or the budget should be allocated to EU producers which are independent of the broadcasting corporation. It is still a moot point whether this is legally binding for the federal government, but so far it has not been implemented into German law and the federal government’s position is that the directive formulates a political goal that is not legally binding as the EU has no jurisdiction over the TV sector.⁵⁴ If implemented, entrants would have to buy additional programs from independent EU producers; which incumbents would already

⁵³ For details see Bauder (2002), Stürmer (2000).

have. Their expenses would serve as sunk costs thereby potentially deterring market entry. Again this would apply only to non-EU entrants as other EU broadcasting corporations are subject to the same regulation. In addition this regulation could potentially crowd out foreign non-EU films that would otherwise have been purchased. Ten percent is not a high percentage and therefore this effect would be rather limited. Currently, however, the regulation is no restriction at all, because it is not implemented into law.

Third, there is a restriction on the *origin of the program*: §6 I RStV implements Art. 4 I of the EU TV directive and stipulates that the main part (i.e., a share of at least ½) of movies, TV films, series, documentaries *should* be of European origin. Again there is no penalty in case of non-compliance and the restriction does not prohibit programs specialized on, say, US movies (Beucher et al. 1999: 104). State regulatory bodies (Landesmedienanstalten) have never felt the need to control the implementation of this regulation and do not compile the necessary data.⁵⁵ The only data broken down to categories we could obtain are for the ZDF, a public station, and VOX, a private station and are shown in Table 6.

Table 6: Country of Origin by Genre 2001

	ZDF			VOX		
	Germany	EU*	USA	Germany	EU*	USA
Movies	17.4%	40.0%	42.6%	7.0%	33.0%	60.0%
TV-films	84.9%	11.3%	3.8%	n.a.	n.a.	n.a.
Series	74.6%	24.8%	0.6%	13.0%	15.0%	70.0%
Documentaries	64.2%	7.5%	28.3%	n.a.	n.a.	n.a.
Reports	100.0%	0.0%	0.0%	n.a.	n.a.	n.a.

*excluding Germany n.a. = not available

Source: Information given by stations on request

⁵⁴ See the proceedings of the constitutional court which however did not rule in that matter: BVerfGE 92, 203/217. The market share of independent producers in Germany is around 40 % (ALM press release from 11.9.2002, <http://www.alm.de/aktuelles/presse/p110902.htm>).

⁵⁵ Letter to the authors from the LfR NRW, the regulatory body for North Rhine-Westphalia from 22. May 2002.

The dominant position of the U.S.A. is apparent for movies (see also Part II) and in the case of VOX for series. Those stations that have a large share of fiction (cf. Table 4) are likely to violate this regulation. In 1996 the EU commission ascertained that 9 out of 19 TV station did not meet the requirement. Table 7 provides figures summed over all categories. Four out of six private stations fall even short of the quota at the aggregate level.

Table 7: Country of Origin 2001
(in percent)

	ARD	ZDF	RTL	SAT.1	ProSieben	VOX	RTL II	Kabel 1
Germany	78.7	81.9	57.6	57.7	34.2	31.5	22.8	14.8
Europe*	3.3	4.4	0.7	0.3	2.9	7.2	3.9	5.5
USA	10.6	7.6	19.2	15.7	43.7	31.1	36.5	53.1
others	2.6	1.0	0.4	0.5	1.7	2.4	16.5	2.0
Trailer	3.4	3.5	4.7	5.3	4.9	8.0	4.5	4.8
Commercials	1.4	1.6	17.4	20.5	12.6	19.8	15.8	19.8
Total	100	100	100	100	100	100	100	100

basis of percentage: 24h per day; sample: one week; all genres, all forms of production

* except Germany

Source: ALM (2001), p. 152

If the regulation on the origin of the program is enforced, stations with a large portfolio of non-EU films will suffer as they will need to acquire EU productions and their existing stock of films etc. will depreciate in value. Obviously it would hit private stations much more than public stations (cf. Tables 6 and 7) and would constitute a barrier to entry for those potential non-EU entrants that have rights of non-EU films or other productions in their portfolio as they would have to purchase additional EU-material.⁵⁶ This regulation would also severely restrict the import of non-EU films and would increase the price of EU films as they would become scarcer. This price effect in turn would make market entry more costly as broadcasting corporations would need to acquire a stock of films at significantly higher prices.⁵⁷

Currently, none of these regulations constitutes a market entry barrier. If they were enforced non-EU entrants would see their costs of entry go up, thereby potentially being deterred from market entry. However, adjustment to the regulations may not be too expensive after all:

⁵⁶ This applies mainly for own productions because broadcasting corporations hold universal rights for those. For purchases, film rights are limited to certain jurisdictions and in time so that a firm planning to enter the German market would purchase only those film rights for Germany that allowed market entry.

Since the regulation does not specify which airtime needs to be used for these productions it would be possible to purchase cheap material and broadcast it during unattractive times of the day (e.g., 3-5 am). Moreover, stations of a broadcasting group may have access to program libraries including EU productions so that the costs to the group might be relatively small as there is a non rivalry to a certain degree in the use of this common resource.⁵⁸

2.6 Special competition law

To ensure diversity and plurality of opinion the Landesmedienanstalten closely cooperate with the commission for the assessment of concentration in the media (KEK). The KEK compiles the viewers' share for each station and aggregates the stations for each media conglomerate.⁵⁹ If a group has a viewer share in excess of 30% the group must not be given licenses for new stations nor is it allowed to invest in other stations. Moreover it must take steps to ensure plurality of opinions. This limit is reduced to 25 % if the conglomerate has a dominant position in other media markets.⁶⁰ A private station that commands a market share of 10 percent or more needs to allocate air time to independent third parties (§26 RStV). In 2001 this provision applied to RTL and SAT1.⁶¹

Steps to ensure plurality are (i) the introduction of an independent program council representing the various groups of the society which advises on the program and (ii) mainly the allocation of air time to independent third parties (§31-32 RStV). These programs need to contribute to plurality of views in the areas of news, information or culture and are selected in close cooperation with the regulatory body (Landesmedienanstalten). TV stations have to pay cost-covering prices and have to allocate at least 75 minutes of prime time per week to these programs (§31 II RStV). The most important independent provider is DCTP that produces TV programs of major newspaper and magazine publishers such as SPIEGEL TV, STERN TV, SÜDDEUTSCHE TV, P.M. REPORTAGE58. It has air time with RTL, SAT1 and VOX (see KEK 2000, ch. I.4.2).

These regulations apply to all private broadcasting corporations alike and thus do not constitute a barrier to entry; rather they are procompetitive as they curb the power of large incumbents. As most other regulations discussed in this section are either not enforced or not restrictive and since in the course of digitalization the bottleneck of scarce transmission

⁵⁷ Section 3 describes how raising the prices for film rights may deter market entry.

⁵⁸ Of course, this argument presupposes that the entrant has a library which she can use also in the German market, i.e. her film rights apply to Germany as well as is the case for own productions.

⁵⁹ This is done according to §28 RStV: Firms are regarded as part of the conglomerate if stocks or voting rights amount to 25 % or more of the total or if the companies are affiliated according to §15 AktG (Companies Act). In case of natural persons kinship is taken into consideration.

⁶⁰ It can go up again to 30 % if the conglomerate has taken appropriate steps to ensure plurality, cf. § 26 RStV.

⁶¹ This provision does not apply to special interest programs other than news/information programs.

capacity will soon be substantially alleviated private barriers to entry become more important. This is subject of the next section. It also shows how a strictly enforced content requirement would be able to deter market entry.

3. Private Barriers to Entry

Market entry would occur in the private segment only. Private stations seeking to attract viewers and taking the program of the public stations as given will tend to position themselves with a program portfolio that leans more towards entertainment, both fiction and non-fiction and includes less information (news, magazines etc.) The differences are especially pronounced for series and movies, cf. Table 4. A substantial share of these programs however is purchased rather than produced or made to order; and purchased films and series stem mainly from the US (Table 6). This observation seems to carry over to other program categories as well, maybe to a somewhat lesser degree (Table 5). As a consequence, the film rights that broadcasting corporations have in their portfolio especially for American movies and series are an important factor for their competitive position. (Another very important part of the portfolio are of course major sports events.)

Once films have been produced the costs of another copy to broadcast the film in a further TV station are negligible.⁶² In order to address the problems involved in commodities that exhibit public goods properties film producers or the studios sell mainly the *rights* to broadcast films rather than only the film itself. This film right is defined for a special media (movie theater, video cassettes and DVDs, Pay-TV, and free TV), for a certain region and time period in a strive to segment markets and to increase revenue through price discrimination.⁶³

Because TV stations compete for viewers they need to have a large stock of attractive film rights. A given stock of film rights loses its potential to attract viewers as films get older and as they have been shown more often.⁶⁴ Thus, in economic terms this stock of film rights acts like a normal capital stock which generates revenue and depreciates over time and which requires continued investments to keep it at an (individually) optimal level. For incumbents, the film rights in their portfolio are sunk costs and they can be used to deter market entry like other sunk costs. In a companion paper (Perino and Schulze 2003) we develop a model that shows these interdependencies more formally. A duopoly of private broadcasting

⁶² Similarly, the costs of producing copies for different market segments are very small compared to the initial production cost.

⁶³ Cf. Owen and Wildman (1992) and Frank (1992) for an analysis of the optimal intertemporal price discrimination through sequential marketing in different market segments (movies, pay TV, videos, free TV).

⁶⁴ Cf. Kruse (1989) for details.

corporations invests in film rights which depreciate in value over time. The individual share of viewers and thus of a given advertisement market is consequently a function of the own stock relative to the total market's stock. It is shown that incumbent firms tend to invest more if market entry is an issue and that under certain parameter constellations they can effectively deter a potential entrant from entering the market. In such a situation even digitalization will not lead to more competition if existing film rights will be applicable to the newly converted transmission channels as well.

This is not far from reality. Since market entry is to be expected from TV broadcasting corporations operating in other European markets such as Italy or England they will have incurred most of the fix costs in terms of expenses for equipment and human capital already. But since film rights are defined for a certain region they will not have a region specific stock of film rights (apart from own productions or ordered productions). Of course they could purchase film rights upon entry but this would drive up their prices and apply only to the flow of new films for which rights are sold. The value of the stock of film rights therefore are the relevant sunk costs in the entry game after convergence.

Films are typically bought in large package deals that include films of varying quality through internationally operating intermediaries (Bauder 2002). Little is known about the large film libraries that the two German private broadcasting groups own, even less is known on the prices of the deals. This is partly due to a restrictive information policy of the corporations, partly due to the fact that the value of a certain right depends on the station's program in general, the time a film is broadcasted etc. (cf. Hamann 2000, Heinrich 1999). The film stock of KirchMedia, that contains about 63,000 hours of series and movies⁶⁵ was estimated at between 800 million Euro and 4 billion Euro.⁶⁶ Subsidiaries of the RTL group hold a large stock of films as well: FremantleMedia Ltd (formerly Pearson Television) holds the rights for 17,500 hours⁶⁷ of entertainment (fiction and non-fiction). On top of that is the library of CLT-UFA-conglomerate.

⁶⁵ Quelle: <http://www.kirchmedia.de/neu/de/pub/kirchmedia/> (website KirchMedia GmbH & Co. KGaA)

⁶⁶ Quelle: <http://www.digitv.de/nwes/viewnews.cgi?nwesid1026317863,13725>, (10.07.2002)

⁶⁷ Quelle: <http://www.fremantlemedia.com/about.html>

PART II Cinema

4. Market Structure and Government Intervention in the Cinema Sector

There are no restrictions on import or export of films; yet the trade in movies and TV films is influenced by government activities in two ways: First, public TV stations show less foreign films than their private counterparts (cf. Table 7) and produce or order more from domestic sources and thus the import of foreign films – mainly from the U.S. – is reduced. It is very hard to quantify this effect as we would need to know how many private stations would replace the public stations and how their program structure would be given that the public programs with a high information and news content would be replaced. (We cannot simply duplicate existing private stations as this disregards that optimization of program structure takes place under different restrictions.) Second, domestic movie production is subsidized on the federal and the state level.

There are two ways to measure the effect of policy intervention, namely to evaluate (a) the input i.e., the amount of subsidies going to domestic film producers, and (b) the output, i.e. the structure of the films shown in Germany in terms of market share of foreign and domestic films. We have taken both routes.

4.1 Support of domestic movie production

In accordance with the federal structure of Germany and since culture has traditionally been under the authority of the German states, film production and distribution has been supported by a number of states and on the federal level through the federal film support agency, 'Filmförderungsanstalt' (FFA). More recently the federal government has played a more active role through the newly created position of a federal undersecretary for culture⁶⁸ ('Kulturstaatsminister'). The relative contributions and the total volume of subsidies are given in Table 8.

Table 8: Support of the German Movie Industry 2002		million €
Filmförderungsanstalt (FFA)	federal	68.94
Beauftragter der Bundesregierung für Kultur und Medien (BKM)	federal	21.95
FFF FilmFernsehFonds Bayern GmbH	state	33.1
Filmstiftung NRW GmbH	state	36.24
Filmboard Berlin-Brandenburg GmbH	state	17.42
FilmFörderung Hamburg GmbH	state	10.58
MFG Medien- u. Filmges. Baden-Württemberg mbH	state	10.23
MDM Mitteldeutsche Medienförderung GmbH	state	13.67
Total		212.13

Source: FFA info 01/03

http://www.filmfoerderungsanstalt.de/downloads/publikationen/ffa_intern/FFA_01_2003.pdf

The federal level accounts for 40 %, the largest single donor is the Filmförderungsanstalt, which has been created through the Filmförderungsgesetz (FFG, Film Support Act) of 6. August 1998. The council that decides on the allocation of funds consists of nine members. They are delegated by the industry associations of the cinemas (2), film producer associations (1+1), film distributors (1), video trade (1), public and private broadcasting corporations (1+1), and the federal parliament (§ 8 FFG). This institutional setup was again chosen to limit government's influence on funding decisions.⁶⁹

Films can be supported if they meet the following requirements (§15 FFG):

1. the producers must reside in Germany, or if they reside in an EU country they need to have a branch office in Germany,
2. One final version must be in German language,
3. at least 30 % of all studio takes must have been shot in Germany,
4. the director needs to be EU citizen or belong to the German culture or if not, most other participants need to be German or EU citizens
5. the film must first be shown in German language in Germany or at an A film festival as German contribution

There are different regulations for co-productions (§16 FFG) but there is no particular bias against EU producers. The Filmförderungsanstalt is funded by a fee from the German cinemas (1.5 – 2.5 % of their turnover), producers of videos/DVD (1.8 % of turnover) and private and public broadcasting corporations (§§ 66 and 66a FFG); in 2001 they contributed roughly ½, ¼, ¼ of the total budget (FFA Geschäftsbericht 2001, pp7-10). The allocation of subsidies to various uses is shown in Table 9:

⁶⁸ The exact title is „Beauftragter der Bundesregierung für Kultur und Medien“.

⁶⁹ For more institutional details see FFA annual report and the Filmförderungsgesetz at www.ffa.de.

**Table 9: Payments by the Filmförderanstalt
in 2001**

Promotion of:	in 1000 EUR
Movies	
-reference funds	15,559
-project grants	14,170
Short films	442
Screenplays	440
Marketing	4,574
Marketing of film media	763
Movie theaters	4,226
Video stores	3,063
Additional copies	1,295
Others	3,651
Total	48,184

Source: Filmstatistisches Jahrbuch 2002, Table 54

Project grants are given to films that meet the above requirements⁷⁰ by a special grant committee (Vergabekommission) of the FFA in a discretionary way. They are non-interest bearing loans that have to be paid back to a degree which depends on the success of the film. The domestic producer must cover at least 15% of total costs from own resources. In 2002, 29 films were supported with a total volume of 11.4 mn €⁷¹ In addition to federal funding many films receive state grants which are typically limited to 2/3 of the sum spent in that particular state.

Producers of films that draw 100,000 or more viewers within a year are entitled to 'reference funds' for the production of a new German film within the next two years.⁷² The fund is allocated to the producers of all eligible films according to their viewer share; maximum single subsidy is 2 mn €. In 2002 63 Films were supported with a total sum of 18 mn € (only seven of which received more than 1 mn € and four between 0.5 and 1 mn €).

It is not easy to assess the relative importance of these funds for the production of German films, i.e. to determine the share of subsidies in total funds because film budgets are not published on a systematic basis. It is even harder to find out what the market share of German films (and all other shares) would have been in the absence of subsidies. Some first indication is given by a comparison of the production costs: According to the Schleswig-Holstein film support agencies average production costs of movies are 3 mn € in Germany

⁷⁰ Project grants may also be given to TV films, but this happens only rarely (§ 32 III FFG).

⁷¹ <http://www.ffa.de/start/content.phtml?page=foerderentscheidungen>

⁷² For films that received certain specified awards the threshold is 50,000 viewers. For all institutional details cf. §§ 22-30 FFG

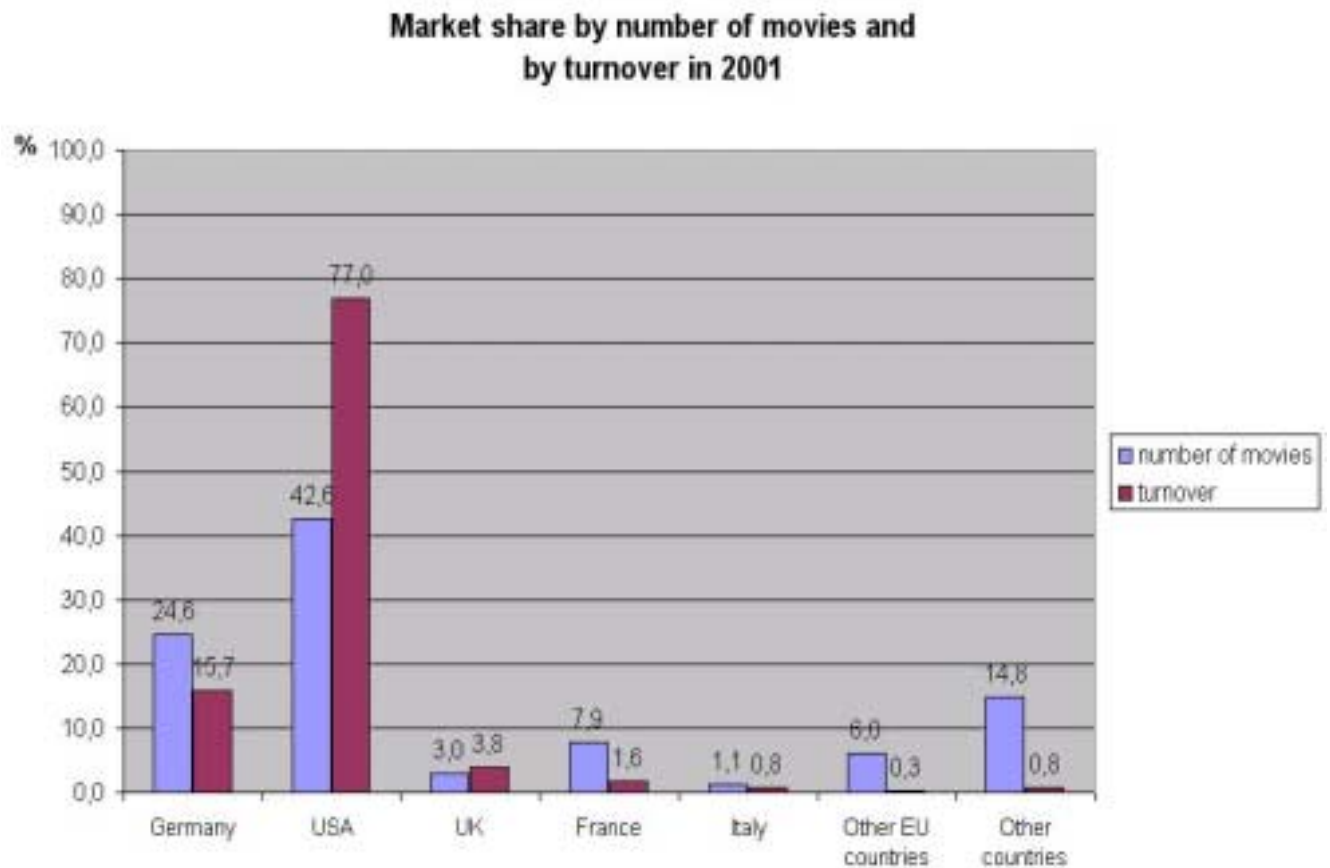
and 60 mn € in the US.⁷³ Thus even though public support seems to be significant for some films that would not have been made without public money it is very little in comparison to the budgetary advantage that American movies enjoy. Trade distortion should therefore be rather limited vis-à-vis the US.

Also it is not entirely clear what role the local (i.e. EU) content requirement for TV stations plays in supporting the German film production (cf. Sect. 2.5). What is however clear is that the support of German movie and TV production has in no way led to a dominant position of the German film industry even in its home market.

4.2 Market Structure

The dominant position of the US film industry in the German movie market is shown in Fig. 4.

Figure 4: Market share by country of origin



Source: *Filmstatistisches Jahrbuch 2002*, tables 12 and 18.

⁷³ Quelle: http://www.infomedia-sh.de/aktuell/0206/film20_umschalten.html; this is a newsletter published by Kulturellen Filmförderung Schleswig-Holstein e.V. and MSH - Gesellschaft zur Förderung audiovisueller Werke in Schleswig-Holstein mbH, two film support agencies, owned by the state Schleswig-Holstein and the public and private broadcasting corporations, respectively. See also Vogel (2001, ch.3).

American films account for almost 80 percent of the German market, while German movies only account for about 15 %. American movies are not only more numerous, on average they are also far more successful per film. The market share of German films in terms of viewers was 12.5 % in 2000 and 18.4 % in 2001.⁷⁴ Other countries command only a very small market share in terms of turnover, but have a more substantial role in terms of availability of new films.

The resulting trade figures are even more pronounced.

Table 10: Trade in film rights by region

	Film Exports 2000 ^a		Film Imports 2000	
	Royalties in EUR	in %	Royalties in EUR	in %
BeNeLux	2,949,150	3.91	118,200,526	14.84
France	16,325,042	21.65	26,765,218	3.36
Greece	8,487	0.01	3,937	0.00
UK	13,209,442	17.51	140,837,432	17.68
Ireland	526,563	0.70	8,850,240	1.11
Iceland	11,349	0.02		
Italy	14,591,765	19.35	4,228,996	0.53
Malta				
Austria	3,560,825	4.72	11,761,844	1.48
Eastern Europe	3,447,414	4.57	597,485	0.08
Portugal	55,343	0.07		
Switzerland	4,474,926	5.93	11,523,073	1.45
Scandinavia	1,488,236	1.97	2,819,373	0.35
Spain	564,811	0.75	353,546	0.04
Europe total	61,542,647	81.60	326,053,451	40.94
USA	783,354	1.04	467,063,062	58.65
Others	13,095,140	17.36	3,299,470	0.41
Sum	75,421,141	100,00	796,415,983	100,00

^a films of German origin

Source: Filmstatistisches Jahrbuch 2002, tables 69 and 70

Table 10 includes all exploitation rights (cinema, TV, video etc.) and thus captures also a possible trade distortion due to the dichotomous TV market, i.e. the fact that public stations show much less American movies than private stations (cf. Section 2.5). Still the American dominance is overwhelming even though it is not as pronounced as in the movie market alone. Germany is a strong net importer which again indicates that the support of domestic films has not led in any way to a strong export position of the German movie industry. Rather it has kept it in existence. Germany exports less than 10 % of what it imports. Almost 60 % of

⁷⁴ http://www.ffa.de/start/download.php?file=publikationen/ffa_intern/FFA_01_2003.pdf.

all imports stem from the US, the remainder from Europe, notably from BeNeLux and the U.K.

The distribution of royalty payments by exploitation rights demonstrates the importance of TV productions.

Table 11: Trade in movie rights by exploitation rights

	Imports 2000		Exports 2000	
	Number of Movies	Royalties in 1000 €	Number of Movies	Royalties in 1000 €
Cinema	650	57,489	95	1,087
Video	22,991	47,067	839	2,969
TV	4,989	523,388	3,559	52,983
Cinema/Video	5	519	11	60
Cinema/TV	3	63	4	260
Video/TV	94	6,692	74	250
Video/TV/Cinema	327	161,194	265	17,809
Total	29,059	796,415	4,847	75,421

Source: Filmstatistisches Jahrbuch 2002, table 68

In conclusion, because the US has a very dominant position in the German movie market domestic film subsidies can have only a very mild trade distorting effect vis-à-vis the US. The trade distorting effect against other European films should neither be too large since EU films are eligible to German film subsidies and other EU member states support their domestic film production too.

5. Conclusion

This paper has analyzed the effects of government interventions in the German TV and cinema markets on international trade and investment flows. The German TV market is characterized by the dichotomy of public and private broadcasting stations of roughly equal sizes. The private segment consists of a duopoly of two broadcasting groups and some special interest stations. Being strictly circumscribed in raising advertisement revenue the fee-financed public stations are hardly direct competitors to private stations, but they reduce viewer numbers for private stations and thus the market size open to private investors. There is however no bias against foreign investors. The recent take-over deal of the Kirch Media Group by Mr. Saban, an American citizen, underlines this very clearly. Almost a quarter of the German TV market had been almost sold to a foreigner. All necessary regulatory permits have been given, the deal failed in the last minute for purely financial reasons.

TV channels are scarce for terrestrial and analog cable transmissions but are relatively abundant for satellite transmissions. They have been allocated by self-governed regulatory institutions of public law according to guidelines laid down in state broadcasting laws. Since

the allocation of channels is made by political bodies that are not *directly* linked to certain parties and is made for a certain period of years it is hard to predict what their decision will be if a major player seeks entry into the German TV market as allocation has to be made to ensure plurality, but involves a fair amount of discretionary scope. They may have seemed to have favored public stations and incumbent private stations for terrestrial and cable transmission while no real shortage of channels occurred for satellite transmission. At the time of writing the regulatory framework undergoes a major shake up as many state broadcasting laws have been amended or are being redrafted leading to much less state involvement in the allocation of channels.⁷⁵ What is even more important, transmission is being progressively digitalized which will greatly enhance transmission capacity and allow for market entry of foreign and domestic competitors on a level playing field. By the end of this decade TV transmission should be completely digital. Even if the bottleneck of scarce transmission capacities is greatly reduced in importance due to digitalization and technical convergence, however, the existing stocks of film rights might be used as deterrence device for market entry as long as existing film rights will carry over to the networks that will have been newly established for transmission of TV signals.

Regulations on TV content with respect to the country of origin and the production form are either not enforced or non-binding. They do not constitute a barrier to entry or distort the international trade in films. The only "distortion" that may be relevant is that public stations rely more on own productions and tend to show more German and European films than private stations do.

In the market for movies government support may only mildly reduce the extremely dominant position of American movies. Although public support covers a non-negligible share of total production costs for German films US films are produced with an average budget that is tremendously larger than that of European films so that German public support reduces this American cost advantage only negligibly. The dominant position of US films is a somewhat smaller in the market for TV films. Summed over all exploitation rights Germany is a huge net importer of films importing more than ten times its exports. Almost 60 percent of the royalties go to the US with the remainder going to Europe. Thus it seems safe to conclude that trade distortion from government regulations is negligible.

⁷⁵ Hamburg's government has introduced a bill for a new broadcasting law that marks a very far reaching deregulation for private TV stations. <http://www.ndr.de/ndr/regional/hh/20030429/mediengesetz.html> (accessed 28. April 2003).

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Appendix

Appendix : Allocation of cable channels in NRW.

Stipulated by law	1	ARD
	2	ZDF
	3	WDR Fernsehen
	4	Arte
	5	3Sat
	6	Der Kinderkanal
	7	Phoenix
	8	RTL (NRW)
	9	Sat.1 (NRW)
	10	VOX
transborder	11	NOS
	12	RTBF 1
	13	VRT 1
	14	H3, N3, Südwest 3 (*)
1. round	15	n-tv
	16	ProSieben
	17	VIVA
	18	Eurosport
	19	tv.nrw 1
	20	BBC World
2. round	21	CNN International
	22	SuperRTL
	23	MTV Europe
	24	DSF
	25	N3
	26	TV 5 Europe
3. round	27	N24
	28	Kabel 1
	29	VIVA ZWEI
	30	Bayerisches Fernsehen
	31	NBC Europe
Single case decision	32	RTL 2
	33	B1
	34	ONYX
	35	Euronews
	36	Mitteldeutsches Fernsehen
	37	tm3
	38	VH-1
	39	Bloomberg Information TV
	40	BBC Prime
	41	Bayern Alpha
	42	CNBC (Europe)
	43	TRT International
	44	Quantum Channel

*In cable networks in areas where two public third programs can be received across the border and are thus both supplied in the cable network the programs of the category „programs with local content are moved one round down. In the above table they move from position 19 to position 25, from position 25 to position 30 etc.

Source: <http://www.lfr.de/downloads/rangfolge5.doc> (accessed 29. April 2003).